

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

DAVID ELIAS, Individually and On Behalf of  
all Others Similarly Situated and the General  
Public,

Plaintiff,

v.

HEWLETT-PACKARD COMPANY,

Defendant.

CASE NO. 12-CV-0421 LHK

**JOINT STIPULATION AND  
[PROPOSED] PROTECTIVE ORDER**

WHEREAS, the Parties to the above-referenced action pending before this Court have agreed to enter into a protective order to be applied to this matter;

NOW, THEREFORE, the Parties, by and through their respective counsel, having stipulated and agreed that an order pursuant to Federal Rule of Civil Procedure 26(c) is necessary to protect the confidentiality of documents and other information obtained in the course of discovery in this Action, it is hereby ORDERED THAT:

**1. SCOPE OF ORDER.** This Stipulation and Protective Order includes in its scope any documents, things, and information (including all documents and tangible things as defined in Rule 34(a) of the Federal Rules of Civil Procedure or any applicable Local Rule) that are produced,

disclosed or filed in the above-captioned action entitled *Elias v. Hewlett-Packard Co.*, No. 12 Civ. 0421 LHK (the “Action”), by or on behalf of any party or non-party, voluntarily or involuntarily, whether pursuant to formal or informal discovery requests, subpoena, deposition notice, or motion practice, and whether revealed in a document, a deposition, a response to any type of written discovery, a submission to the Court, or otherwise (“Litigation Material”). Nothing in this Order shall obligate any Party or non-party to produce any Litigation Material to any other party that it is not otherwise required to produce under the Federal Rules of Civil Procedure or any applicable local rule.

**2. USE OF LITIGATION MATERIAL GENERALLY.** All Litigation Material, including all Litigation Material designated as or reflecting RESTRICTED INFORMATION or RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION, as defined below, shall be used solely for the purposes of prosecuting, defending, or attempting to settle this Action, and for no other purpose, absent further order of the Court. However, nothing herein shall prevent or in any way limit disclosure, use or dissemination of any documents, things, or information that are in the public domain.

**3. DEFINITIONS.**

(a) “Party” or “Parties” shall mean any or all parties to this Action.

(b) “Producing Party” shall mean a Party or non-party on behalf of which documents, things, or information is produced, furnished, or disclosed, during the course of this Action, in response to requests for production of documents, interrogatories, requests for admission, depositions, or any other requests for discovery pursuant to the Federal Rules of Civil Procedure, or in the form of pleadings, briefs, motions, memoranda, testimony adduced at trial, materials introduced into evidence, or other form of information produced, furnished, or disclosed by or on behalf of such a Party or non-party.

(c) “Receiving Party” shall mean any party to which documents, things, or information is produced, furnished, or disclosed, whether voluntarily or in response to a formal or informal discovery request, subpoena, deposition notice, or court order, by any Producing Party in this Action.

(d) "RESTRICTED INFORMATION" shall mean Litigation Material which qualifies for protection under standards developed under Fed. R. Civ. Proc. 26(c), including:

- (i) confidential or proprietary technical or scientific information; (ii) confidential know-how;
- (iii) confidential, proprietary, or sensitive business, personal, or financial information; (iv) customer and supplier information; (v) marketing strategies and information; (vi) any information which is not generally known and which the Producing Party would not normally reveal to third parties or would cause third parties to maintain in confidence; or (vii) confidential information of a non-party that the Producing Party is bound by a separate confidentiality agreement or court order to maintain in confidence. RESTRICTED INFORMATION shall not include information that is available for public access.

(e) "RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION" shall mean Litigation Material which any Producing Party, in good faith, believes to contain competitive information, the disclosure of which could cause competitive or commercial injury to the parties, or where the information contains competitive information of third parties and the parties have a contractual obligation with such third parties to protect such information. In addition, the Court may order that other categories of information may be designated " RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION".

#### **4. DESIGNATION OF DOCUMENTS OR OTHER LITIGATION MATERIAL.**

(a) Any Party or non-party may designate, at or prior to the time of production, any non-public Litigation Material (and copies thereof) produced or disclosed by or on behalf of such Party or non-party, or any portion of such material, as either:

(i) RESTRICTED INFORMATION, by placing on each page and each thing to which the designation applies a legend substantially as follows: "RESTRICTED INFORMATION SUBJECT TO PROTECTIVE ORDER," "RESTRICTED INFORMATION," or other similar designation; or

(ii) RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION, by placing on each page and each thing to which the designation applies a legend substantially as follows: "RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION SUBJECT TO

1 PROTECTIVE ORDER,” “RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION,”  
 2 “OUTSIDE COUNSEL ONLY,” or other similar designation plainly indicating “Outside Counsel  
 3 Only” Litigation Material.

4 (b) Each Party or non-party that designates information or items for protection under this Order  
 5 must take care to limit any such designation to specific material that qualifies under the appropriate standards.  
 6 The Producing Party must designate for protection only those parts of material, documents, items, or  
 7 oral or written communications that qualify – so that other portions of the material, documents, items,  
 8 or communications for which protection is not warranted are not swept unjustifiably within the ambit  
 9 of this Order. Mass indiscriminate or routinized designations are prohibited. Designations that are  
 10 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily  
 11 encumber or retard the case development process or to impose unnecessary expenses and burdens on  
 12 other parties) expose the Producing Party to sanctions.

13 (c) If it comes to a Party’s or non-party’s attention that information or items that it  
 14 designated for protection do not qualify for protection at all, or do not qualify for the level of  
 15 protection initially asserted, that Party or non-party must promptly notify all other parties that it is  
 16 withdrawing the mistaken designation.

## 17 **5. PROCEDURE FOR OBJECTION TO DESIGNATION.**

18 (a) The designation of an item as RESTRICTED INFORMATION or  
 19 RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION may be challenged, among other  
 20 reasons, because (i) the information is or comes to be publicly disclosed in a printed publication,  
 21 (ii) the information is or comes to be generally publicly known, or (iii) the information is or comes to  
 22 be otherwise known to the Parties through other means without any breach of the confidentiality  
 23 obligations hereunder. Any inadvertent disclosure of RESTRICTED INFORMATION or  
 24 RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION under this Protective Order shall not  
 25 serve as a basis for challenging the RESTRICTED INFORMATION or RESTRICTED OUTSIDE  
 26 COUNSEL ONLY INFORMATION designation of the information in question.

27 (b) At any time, any Party may object in good faith to the designation or redesignation of any  
 28 Litigation Material as RESTRICTED INFORMATION or RESTRICTED OUTSIDE COUNSEL ONLY

1 INFORMATION by providing counsel for the Producing Party with written notice of the reasons for its  
2 objection. Unless a prompt challenge to a Producing Party's confidentiality designation is necessary to  
3 avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant disruption  
4 or delay of the litigation, a Party does not waive its right to challenge a confidentiality designation by  
5 electing not to mount a challenge promptly after the original designation is disclosed.

6 The Producing Party shall, within seven (7) calendar days after receiving such written notice, advise  
7 the objecting party, in writing, of the basis for its designation. Within seven (7) calendar days  
8 thereafter, the parties shall confer in a good-faith effort to resolve the matter.

9 (c) Failing such resolution, the Producing Party may, within seven (7) days after the Parties' meet  
10 and confer, file and serve a motion to retain confidentiality under Civil Local Rule 7 (and in compliance  
11 with Civil Local Rule 79-5, the Court's standing order and/or General Order 62, if applicable). Each  
12 such motion must be accompanied by a competent declaration affirming that the movant has  
13 complied with the meet and confer requirements imposed in the preceding paragraph. Failure by the  
14 Designating Party to make such a motion including the required declaration within 7 days of the  
15 Parties' meet and confer shall automatically waive the confidentiality designation for each challenged  
16 designation. In addition, the Challenging Party may file a motion challenging a confidentiality  
17 designation at any time if there is good cause for doing so, including a challenge to the designation of  
18 a deposition transcript or any portions thereof. Any motion brought pursuant to this provision must be  
19 accompanied by a competent declaration affirming that the movant has complied with the meet and  
20 confer requirements imposed by the preceding paragraph.

21 (d) The burden of persuasion in any such challenge proceeding shall be on the  
22 Producing Party. Until the Court rules on the challenge, all parties shall continue to afford the  
23 material in question the level of protection to which it is entitled under the Producing Party's  
24 designation.

25 (e) Unless the Producing Party has waived the confidentiality designation by  
26 failing to file a motion to retain confidentiality as described above, RESTRICTED INFORMATION  
27 or RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION shall be treated as such and shall  
28 be subject to the provisions hereof unless and until one of the following occurs: (i) the party who

1 designated the Litigation Material as RESTRICTED INFORMATION or RESTRICTED OUTSIDE  
2 COUNSEL ONLY INFORMATION changes or removes such designation in writing; or (ii) the  
3 Court orders the change or removal of such designation. If Litigation Material was properly shown to  
4 a person who would not be entitled to see it as reclassified, that person shall be advised that the  
5 Litigation Material has been reclassified and should be instructed not to use the Litigation Material  
6 for any purpose other than the litigation of this Action.

7       **6. USE OF RESTRICTED INFORMATION OR RESTRICTED OUTSIDE**  
8 **COUNSEL ONLY INFORMATION.** RESTRICTED INFORMATION shall not be made  
9 available, nor shall the contents thereof be disclosed, to persons other than QUALIFIED PERSONS,  
10 as defined in Paragraph 7 herein, and RESTRICTED OUTSIDE COUNSEL ONLY  
11 INFORMATION shall not be made available, nor shall the contents thereof be disclosed, to persons  
12 other than SPECIALLY QUALIFIED PERSONS, as defined in Paragraph 8 herein, except that  
13 RESTRICTED INFORMATION and RESTRICTED OUTSIDE COUNSEL ONLY  
14 INFORMATION may be made available or the contents thereof disclosed in accordance with the  
15 provisions of Paragraphs 10 and 11 herein. All RESTRICTED INFORMATION and RESTRICTED  
16 OUTSIDE COUNSEL ONLY INFORMATION shall be carefully maintained by the Receiving Party  
17 in secure facilities and access to such RESTRICTED INFORMATION and RESTRICTED  
18 OUTSIDE COUNSEL ONLY INFORMATION shall be permitted only to persons having access  
19 thereto under the terms of this Protective Order.

20       **7. QUALIFIED PERSONS.** QUALIFIED PERSONS as used herein shall include only  
21 the following:

- 22           (a) a Party (such as the named plaintiff);  
23           (b) a Receiving Party's outside litigation counsel of record;  
24           (c) the support personnel (such as paralegals, administrative assistants, secretaries,  
25 and clerical and administrative staff) of a Receiving Party's outside litigation counsel of record as  
26 necessarily incident to the litigation of this Action;  
27  
28

(d) personnel at document duplication, coding, imaging, or scanning service establishments retained by, but not regularly employed by, outside litigation counsel of record as necessarily incident to the litigation of this Action;

(e) Qualified Consultants and Qualified Experts, as provided in Paragraph 10;

(f) the support personnel (such as administrative assistants, secretaries, and clerical and administrative staff) of a Qualified Consultant and Qualified Expert as necessarily incident to the litigation of this Action;

(g) any arbitrator, referee, special master, mediator and/or the Court, their personnel, jurors and alternate jurors, and court reporters, stenographers, and videographers transcribing or recording testimony at depositions, hearings, or trial in this Action;

(h) witnesses testifying at trial or at deposition, as provided in Paragraph 13 below, and only after the witness has executed an Agreement to Abide by Protective Order in the form attached hereto as Exhibit B; and.

(i) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information

**8. SPECIALLY QUALIFIED PERSONS.** SPECIALLY QUALIFIED PERSONS as used herein shall include only those QUALIFIED PERSONS listed in Paragraphs 7(a), (b), (c), (d), (e), (g), (h), (i) and any persons specially qualified to receive RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION by virtue of the Producing Party having approved of the proposed Specially Qualified Person pursuant to Paragraph 11, or if the Court has ruled on an application by the Receiving Party that the proposed Specially Qualified Person may receive the RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION of the Producing Party.

**9. AGREEMENT BY QUALIFIED PERSONS AND SPECIALLY QUALIFIED PERSONS.**

(a) Except as provided in this Protective Order, RESTRICTED INFORMATION shall not be made available to any QUALIFIED PERSON, nor shall RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION be made available to any SPECIALLY QUALIFIED PERSON, unless such QUALIFIED PERSON or SPECIALLY QUALIFIED PERSON has first read this

1 Stipulation and Protective Order and has agreed in writing (i) to be bound by the terms hereof, (ii) to  
 2 maintain the confidentiality of the information and not to use or disclose the information to anyone  
 3 other than as provided herein, and (iii) to utilize such information solely for the purpose of this  
 4 Action (as evidenced by signing an Agreement to Abide by Protective Order, in the form set forth in  
 5 Exhibit A or B hereto, as appropriate).

6 (b) Support personnel (such as paralegals, administrative assistants, secretaries,  
 7 and clerical and administrative staff) need not sign an Agreement to Abide by Protective Order to  
 8 constitute QUALIFIED PERSONS or SPECIALLY QUALIFIED PERSONS if their supervisors  
 9 have done so. In addition, the assent to this Stipulation and Protective Order by counsel for a Party or  
 10 non-party binds such counsel, his or her law firm, and support personnel employed by such law firm  
 11 for purposes of constituting QUALIFIED PERSONS and/or SPECIALLY QUALIFIED PERSONS.

12 (c) The Court and other individuals set forth in Paragraph 7(g) need not sign an  
 13 Agreement to Abide by Protective Order.

14 (d) Counsel for a Party obtaining an Agreement to Abide by Protective Order shall  
 15 retain a copy of that Agreement during the course of this Action until the case involving that  
 16 Counsel's client is terminated by judgment, dismissal, or settlement.

17 (e) In the event that any QUALIFIED PERSON or SPECIALLY QUALIFIED  
 18 PERSON ceases to be actively engaged in the litigation of this Action, access by such person to  
 19 RESTRICTED INFORMATION or RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION  
 20 shall be terminated. The provisions of this Protective Order, however, shall otherwise remain in full  
 21 force and effect as to such QUALIFIED PERSON or SPECIALLY QUALIFIED PERSON.

22 **10. APPROVAL OF PROPOSED QUALIFIED CONSULTANTS AND**  
 23 **QUALIFIED EXPERTS.**

24 (a) A consultant or expert retained by a Party shall become a Qualified Consultant  
 25 or Qualified Expert, as the case may be, as to a particular Producing Party and may receive the  
 26 RESTRICTED INFORMATION of that Producing Party only after the proposed Qualified  
 27 Consultant or Qualified Expert has executed an Agreement to Abide by Protective Order in the form  
 28 attached hereto as Exhibit B, provided that if the Party chooses a consultant or expert who currently



1 serves, or in the last three (3) years has served as an employee of, or as a consultant or expert witness  
2 for, the Producing Party, the Party shall notify the Producing Party before disclosing any  
3 RESTRICTED INFORMATION to that individual and shall give the opportunity to move for a  
4 protective order preventing or limiting such disclosure. Qualified Consultants or Qualified Experts  
5 may only receive RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION if they become a  
6 SPECIALLY QUALIFIED PERSON as set forth in Paragraph 11.

7 (b) A Producing Party may object to the designation of any person as a Qualified  
8 Consultant or Qualified Expert. Such objection must be for good cause, stating with particularity the  
9 reasons for the objection, and must be in writing served on all Parties within fourteen (14) days of the  
10 discovery by the Producing Party of the identity of the Qualified Consultant or Qualified Expert.  
11 Failure to object within the period referenced in this Paragraph shall constitute approval. If a written  
12 notice of objection is served, no RESTRICTED INFORMATION or RESTRICTED OUTSIDE  
13 COUNSEL ONLY INFORMATION of the Producing Party shall be disclosed to the proposed  
14 Qualified Consultant or Qualified Expert until the objection is resolved by agreement or by an order  
15 of the Court.

16 (c) A Party that receives a timely written objection pursuant to Paragraph 10(b)  
17 must meet and confer with the Producing Party (through direct voice to voice dialogue) to try to  
18 resolve the matter by agreement within seven (7) days of the written objection. If no agreement is  
19 reached, the Party seeking to make the disclosure to the Qualified Consultant or Qualified Expert  
20 may file a motion within seven (7) days after the parties' meet and confer as provided in Civil Local  
21 Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) seeking permission from the  
22 Court to do so. Any such motion must describe the circumstances with specificity, set forth in detail  
23 the reasons for which the disclosure to the Qualified Consultant or Qualified Expert is reasonably  
24 necessary, assess the risk of harm that the disclosure would entail, and suggest any additional means  
25 that might be used to reduce that risk. In addition, any such motion must be accompanied by a  
26 competent declaration in which the movant describes the parties' efforts to resolve the matter by  
27 agreement (i.e., the extent and the content of the meet and confer discussions) and sets forth the  
28 reasons advanced by the Producing Party for its refusal to approve the disclosure.

1 (d) The Producing Party objecting pursuant to Paragraph 10(b) shall have the burden of  
2 demonstrating by a preponderance of the evidence that the proposed Qualified Consultant or  
3 Qualified Expert should not be permitted to receive RESTRICTED INFORMATION or  
4 RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION.

5 **11. APPROVAL OF PROPOSED SPECIALLY QUALIFIED PERSONS.**

6 (a) A person shall become a Specially Qualified Person as to a particular  
7 Producing Party and may receive RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION of  
8 that Producing Party only after the following conditions have been satisfied: (i) the proposed  
9 Specially Qualified Person has executed an Agreement to Abide by Protective Order in the form  
10 attached hereto as Exhibit A or B hereto, as appropriate; (ii) the executed Agreement and a list of any  
11 known present or former relationships or engagements between the proposed Specially Qualified  
12 Person and any Party or known competitor of a Party have been served on the Producing Party; and  
13 (iii) the Producing Party has failed to object to the proposed Specially Qualified Person in the manner  
14 and within the time specified in Paragraph 11(b), or the Court has ruled that the proposed Specially  
15 Qualified Person may receive RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION.

16 (b) A Producing Party shall have nine (9) days from the date of facsimile or  
17 electronic mail service of the materials and information served pursuant to Paragraphs 11(a) or this  
18 Paragraph 11(b), to object to a proposed Specially Qualified Person. Such objection must be for  
19 good cause, stating with particularity the reasons for the objection, and must be in writing served on  
20 all Parties. Failure to object within the period referenced in this Paragraph shall constitute approval.  
21 If a written notice of objection is served, no RESTRICTED INFORMATION or RESTRICTED  
22 OUTSIDE COUNSEL ONLY INFORMATION of the Producing Party shall be disclosed to the  
23 proposed Specially Qualified Person until the objection is resolved by agreement or by an order of  
24 the Court.

25 (c) A Party that receives a timely written objection pursuant to Paragraph 11(a)  
26 must meet and confer with the Producing Party (through direct voice to voice dialogue) to try to  
27 resolve the matter by agreement within seven (7) days of the written objection. If no agreement is  
28 reached, the Party seeking to make the disclosure to the Specially Qualified Person may file a motion

1 within seven (7) days after the parties' meet and confer as provided in Civil Local Rule 7 (and in  
 2 compliance with Civil Local Rule 79-5, if applicable) seeking permission from the Court to do so.  
 3 Any such motion must describe the circumstances with specificity, set forth in detail the reasons for  
 4 which the disclosure to the Specially Qualified Person is reasonably necessary, assess the risk of  
 5 harm that the disclosure would entail, and suggest any additional means that might be used to reduce  
 6 that risk. In addition, any such motion must be accompanied by a competent declaration in which the  
 7 movant describes the parties' efforts to resolve the matter by agreement (i.e., the extent and the  
 8 content of the meet and confer discussions) and sets forth the reasons advanced by the Producing  
 9 Party for its refusal to approve the disclosure.

10 (d) The Producing Party objecting pursuant to Paragraph 11(b) shall have the  
 11 burden of demonstrating by a preponderance of the evidence that the proposed Specially Qualified  
 12 Person should not be permitted to receive RESTRICTED INFORMATION or RESTRICTED  
 13 OUTSIDE COUNSEL ONLY INFORMATION.

14 **12. LIMITED DISCLOSURE TO PARTIES WITH PRIOR ACCESS.** Nothing  
 15 herein shall prevent the disclosure of any RESTRICTED INFORMATION or RESTRICTED  
 16 OUTSIDE COUNSEL ONLY INFORMATION to any of the following:

17 (a) the Producing Party;  
 18 (b) any current employee of the Producing Party;  
 19 (c) anyone who authored or received the RESTRICTED INFORMATION or  
 20 RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION, as evidenced by the identification of  
 21 the person as an author, recipient, or copyee on the face of the RESTRICTED INFORMATION or  
 22 RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION.

23 **13. LIMITED DISCLOSURE TO WITNESSES TESTIFYING AT TRIAL OR AT**  
 24 **DEPOSITION.** RESTRICTED INFORMATION or RESTRICTED OUTSIDE COUNSEL ONLY  
 25 INFORMATION may be made available, or the contents thereof disclosed, to witnesses testifying at  
 26 trial or at deposition, or who provide an affidavit or certification, only if:

27 (a) in the case of a document, it appears that the witness has previously seen or  
 28 received the RESTRICTED INFORMATION or RESTRICTED OUTSIDE COUNSEL ONLY

1 INFORMATION contained therein, either because the document identifies the witness as an author,  
2 recipient or copyee, or because the document comes from the files of the witness;

3 (b) the lawyer disclosing such RESTRICTED INFORMATION or RESTRICTED  
4 OUTSIDE COUNSEL ONLY INFORMATION has a reasonable, good-faith belief based upon the  
5 witness's testimony or the testimony of other witnesses that the witness has had previous access to  
6 the RESTRICTED INFORMATION or RESTRICTED OUTSIDE COUNSEL ONLY  
7 INFORMATION;

8 (c) the Producing Party agrees in writing or on the record that the witness may  
9 have access to the RESTRICTED INFORMATION or RESTRICTED OUTSIDE COUNSEL ONLY  
10 INFORMATION for purposes of his or her testimony at trial and/or at deposition; or

11 (d) the witness is employed by or affiliated with the Producing Party.  
12 If the basis of the disclosure is (a) or (b) above, then immediately after the disclosure, the lawyer  
13 disclosing such RESTRICTED INFORMATION or RESTRICTED OUTSIDE COUNSEL ONLY  
14 INFORMATION must make an inquiry with respect to the witness's previous access to such  
15 information, and if it becomes apparent on such inquiry that the witness has not had previous access  
16 to the RESTRICTED INFORMATION or RESTRICTED OUTSIDE COUNSEL ONLY  
17 INFORMATION, the item shall be withdrawn and no further inquiry regarding the RESTRICTED  
18 INFORMATION or RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION shall be  
19 permitted. Any witness testifying at trial or at deposition or who provides an affidavit or  
20 certification, or his or her counsel, who receives RESTRICTED INFORMATION or RESTRICTED  
21 OUTSIDE COUNSEL ONLY INFORMATION shall not reveal or discuss the contents of that  
22 information to or with any person who is not entitled to receive such information pursuant to this  
23 Protective Order.

24 **14. DESIGNATION OF DEPOSITION TESTIMONY.** A Party or non-party may  
25 designate information disclosed during a deposition as RESTRICTED INFORMATION or  
26 RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION by so indicating on the record at the  
27 deposition. A Party or non-party may also designate in writing, within fourteen (14) calendar days of  
28 the receipt of the final version of the transcript (the "Designation Period"), specific pages of the

1 transcript to be treated as RESTRICTED INFORMATION or RESTRICTED OUTSIDE COUNSEL  
2 ONLY INFORMATION. Until the Designation Period has elapsed for a given transcript or portion  
3 thereof, that transcript or such portion shall be treated as RESTRICTED OUTSIDE COUNSEL  
4 ONLY INFORMATION. When information contained or incorporated in a deposition transcript is  
5 designated as RESTRICTED INFORMATION or RESTRICTED OUTSIDE COUNSEL ONLY  
6 INFORMATION, arrangements shall be made with the court reporter by the Party making the  
7 designation to label the relevant pages RESTRICTED INFORMATION or RESTRICTED OUTSIDE  
8 COUNSEL ONLY INFORMATION, as the case may be.

9 **15. ATTENDANCE AT DEPOSITIONS.** During depositions of any Party or non-party,  
10 a Party or non-party claiming that information to be disclosed or upon which questions may be based  
11 is RESTRICTED INFORMATION or RESTRICTED OUTSIDE COUNSEL ONLY  
12 INFORMATION may exclude from the room any person who is not a QUALIFIED PERSON or  
13 SPECIALLY QUALIFIED PERSON, as appropriate under this Protective Order.

14 **16. FILING RESTRICTED INFORMATION AND RESTRICTED OUTSIDE**  
15 **COUNSEL ONLY INFORMATION.** Without written permission from the Producing Party, or a  
16 court order secured after appropriate notice to all interested persons, a Party may not file in the public  
17 record in this action any RESTRICTED INFORMATION or RESTRICTED OUTSIDE COUNSEL  
18 ONLY INFORMATION. Requests by any Party to file RESTRICTED INFORMATION and  
19 RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION under seal shall be governed by  
20 Civil Local Rule 79-5 and General Order 62.

21 **17. USE OF RESTRICTED INFORMATION OR RESTRICTED OUTSIDE**  
22 **COUNSEL ONLY INFORMATION AT HEARINGS OR TRIAL.** Nothing in this Protective  
23 Order shall prevent a Party from using any RESTRICTED INFORMATION or RESTRICTED  
24 OUTSIDE COUNSEL ONLY INFORMATION at a hearing or at trial. The Parties may request, as  
25 appropriate and pursuant to this Protective Order, a ruling from the Court that attendance at those  
26 portions of any hearing or at trial, or access to the transcripts of those portions of any hearing or the  
27 trial, in which RESTRICTED INFORMATION or RESTRICTED OUTSIDE COUNSEL ONLY  
28

1 INFORMATION is disclosed be restricted to court personnel, QUALIFIED PERSONS, and  
2 SPECIALLY QUALIFIED PERSONS.

3       **18. PROCEDURE FOR POST-PRODUCTION DESIGNATION.** At any time prior to  
4 the final pretrial conference in this Action, a Producing Party may seek additional protection for  
5 previously produced Litigation Material by designating such Litigation Material as RESTRICTED  
6 INFORMATION or RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION, or changing the  
7 classification of any Litigation Material designated RESTRICTED INFORMATION or  
8 RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION, by providing written notice to the  
9 Receiving Party. If Litigation Material was properly shown to a person who would not be entitled to  
10 see it as newly designated or redesignated, that person shall be advised by the Receiving Party that  
11 the Litigation Material has been designated or redesignated as RESTRICTED INFORMATION or  
12 RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION, as the case may be, and instructed  
13 not to use the Litigation Material for any purpose other than the litigation of this Action. That person  
14 and the Receiving Party shall not be subject to liability for failure to comply with such terms, until  
15 receipt of such written notice.

16       **19. AVAILABILITY TO NON-PARTIES.** Any non-party, whether an individual or  
17 entity, from whom discovery is sought may invoke the protection of this Protective Order by giving  
18 written notice to the Party seeking such discovery. The non-party shall thereafter be treated as  
19 Producing Party and bound by this Protective Order in the same manner as the parties to this action.

20       **20. NOTICE TO NON-PARTIES.** Any Party issuing a subpoena to a non-party shall  
21 enclose a copy of this Protective Order. Within ten (10) calendar days, the non-party must either  
22 request the protection of this Protective Order or notify the issuing party that the non-party does not  
23 intend to seek the protection of this Protective Order or wishes to seek different protection.

24       **21. NO WAIVER.**

25           (a) Nothing in this Protective Order shall prejudice the right of any Party to object  
26 to the production of any document or part thereof upon any appropriate ground, including any  
27 applicable privilege, and nothing herein shall be construed as a waiver of such right. Moreover,  
28 nothing in this Protective Order shall prejudice the right of any Party to object to the admissibility at

1 trial of any Litigation Material or other evidentiary material on any appropriate ground, and nothing  
2 herein shall be construed as a waiver of such right. Nothing in this Order abridges the right of any  
3 person to seek its modification by the court in the future.

4 (b) Entering into, agreeing to and/or complying with the terms of this Protective  
5 Order shall not (i) operate as an admission by any Party that any particular Litigation Material  
6 contains or reflects currently valuable trade secrets or protected proprietary or commercial  
7 information; or (ii) operate as an admission by any Party that any particular Litigation Material is, or  
8 is not, relevant to this Action.

9 **22. PARTIES' OWN INFORMATION.** Nothing in this Protective Order shall limit any  
10 Producing Party's use of its own documents, things or information. Nor shall anything in this  
11 Protective Order prevent any Producing Party from disclosing its RESTRICTED INFORMATION or  
12 RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION to any person. Such disclosures  
13 shall not affect any designation of such information as RESTRICTED INFORMATION or  
14 RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION pursuant to the terms of this  
15 Protective Order so long as the disclosure is made in a manner which is reasonably calculated to  
16 maintain the confidentiality of the information.

17 **23. DISCLOSURES BEYOND PROTECTIVE ORDER.** Nothing in this Protective  
18 Order shall prevent disclosure beyond the terms of this Protective Order (i) if the Designating  
19 Party(ies) consents to such disclosure; (ii) if the Court, after notice to all affected persons, allows  
20 such disclosure; or (iii) if the Party to whom RESTRICTED INFORMATION or RESTRICTED  
21 OUTSIDE COUNSEL ONLY INFORMATION has been produced thereafter becomes obligated to  
22 disclose the information in response to a lawful subpoena or other legal process, provided that the  
23 subpoenaed party gives prompt written notice to counsel for the Designating Party and permits  
24 counsel for that party at least ten (10) calendar days from receipt of the written notice to intervene  
25 and seek judicial protection from the enforcement of the subpoena and/or entry of an appropriate  
26 protective order in the action in which the subpoena was issued

27 **24. INADVERTENT PRODUCTION OF PRIVILEGED LITIGATION**  
28 **MATERIAL UNDER FEDERAL RULE OF CIVIL PROCEDURE 26(b)(5)(B) AND**



**FEDERAL RULE OF EVIDENCE 502.** The inadvertent production of Litigation Material which a Party or non-party later claims should not have been produced because of a privilege, including but not limited to the attorney-client privilege, work-product privilege, or joint defense privilege (“Inadvertently Produced Privileged Material”) will not be deemed a waiver of any privileges. A Party or non-party may request the return of any Inadvertently Produced Privileged Material. A request for the return of any Inadvertently Produced Privileged Material shall identify the Litigation Material inadvertently produced and the basis for withholding such Litigation Material from production. If a Party or non-party requests the return, pursuant to this Paragraph, of any Inadvertently Produced Privileged Material then in custody of another party, such party shall within five (5) business days return to the requesting Party or non-party the Inadvertently Produced Privileged Material and destroy all copies thereof. The party or parties returning such Inadvertently Produced Privileged Material shall not assert as a ground for entering an order compelling production of the Inadvertently Produced Privileged Material the fact or circumstances of the inadvertent production. The return of any Inadvertently Produced Privileged Material shall not in any way preclude the Receiving Party from moving the Court for an order that (i) the Litigation Material was never privileged or otherwise immune from disclosure; or (ii) any applicable privilege or immunity has been waived by some act other than the production of the Litigation Material.

**25. INADVERTENT DISCLOSURE OF RESTRICTED INFORMATION OR RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION.**

(a) If any Litigation Material that a Party or non-party intends to designate as RESTRICTED INFORMATION or RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION is inadvertently disclosed without being marked in accordance with this Protective Order, the failure to so mark the Litigation Material shall not be deemed a waiver of its confidentiality.

(b) If any Litigation Material designated as RESTRICTED INFORMATION or RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION hereunder is disclosed, through inadvertence or otherwise, to a person or party other than a QUALIFIED PERSON or SPECIFICALLY QUALIFIED PERSON, as the case may be, then the party disclosing the information shall use its best efforts to bind such person or party to the terms of this Protective Order



1 and (a) such person shall be informed promptly of all provisions of this Protective Order by the  
 2 disclosing party; (b) such person shall be identified immediately to the Party that designated the  
 3 Litigation Material as RESTRICTED INFORMATION or RESTRICTED OUTSIDE COUNSEL  
 4 ONLY INFORMATION; and (c) the person to whom disclosure was made shall be requested to sign  
 5 an Agreement to Abide by Protective Order in the form of Exhibit C hereto, which signed Agreement  
 6 shall be served on the Party that designated the Litigation Material as RESTRICTED  
 7 INFORMATION or RESTRICTED OUTSIDE COUNSEL INFORMATION. Nothing in this  
 8 Paragraph shall affect the Producing Party's remedies under this Protective Order or otherwise for  
 9 such unauthorized disclosure.

10 **26. RETURN OR DESTRUCTION OF RESTRICTED INFORMATION OR**  
 11 **RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION UPON CONCLUSION OF**  
 12 **THIS ACTION.**

13 (a) At the conclusion of this Action, each party subject to the terms of this  
 14 Protective Order shall assemble and return to each Producing Party all originals and reproductions of  
 15 any Litigation Material containing information designated as RESTRICTED INFORMATION or  
 16 RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION in its possession, custody or control  
 17 within sixty (60) days of the conclusion of this Action, including notes made therefrom or summaries  
 18 thereof, or, in lieu of returning Litigation Materials containing information designated as  
 19 RESTRICTED INFORMATION or RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION,  
 20 a party may destroy all such Litigation Material within sixty (60) days of the conclusion of this  
 21 Action, provided the party electing to undertake such destruction certifies to the Producing Party in  
 22 writing that it has made a reasonable and good-faith effort to destroy such Litigation Material, and  
 23 that all such material has been destroyed to the best of its knowledge.

24 (b) Notwithstanding Paragraph 26(a), and subject to Paragraph 6, outside litigation  
 25 counsel for each Party may retain a record including one copy of the following, irrespective of  
 26 whether or not RESTRICTED INFORMATION or RESTRICTED OUTSIDE COUNSEL ONLY  
 27 INFORMATION or another Party or non-party is included: (i) its correspondence file of this case;  
 28 (ii) its pleading file, including all briefs, memoranda, affidavits, supporting materials, and all papers

served on the Party; (iii) any briefs and appendixes on appeal; (iv) all legal research memoranda; (v) its file of deposition transcripts and accompanying exhibits; and (vi) its file of trial transcripts and accompanying exhibits.

**27. SURVIVAL OF OBLIGATIONS.**

(a) All the provisions of this Protective Order shall survive the conclusion of this Action, and shall continue to be binding after the conclusion of this Action unless subsequently modified by agreement among the Parties or further order of the Court.

(b) "Conclusion of this Action" shall mean such time as all appeal periods have expired and any settlement or judgment has become final.

(c) For the purposes of enforcing this Protective Order and resolving any disputes thereunder, the Court retains jurisdiction over the Parties and any persons provided access to RESTRICTED INFORMATION or RESTRICTED OUTSIDE COUNSEL ONLY INFORMATION under the terms of this Protective Order for a period of six months after the final termination of this action.

**28. VIOLATIONS SANCTIONABLE.** All persons bound by this Protective Order are hereby notified that if this Protective Order is in any manner violated, the person or entity who commits such violation may be subject to such sanctions as the Court on motion and after a hearing deems just.

**29. RELIEF FROM PROTECTIVE ORDER.** Entry of this Protective Order shall be without prejudice to the application by any Party or non-party (i) for relief from any restriction contained herein or (ii) for any order compelling or further restricting the production or use of any Litigation Material produced, furnished, or disclosed in the course of discovery in this Action. The Parties may amend or modify any provision of this Order by mutual agreement, which agreement shall be embodied in a written stipulation to be approved by the Court.

DATED: March 5, 2013

  
United States District Judge Lucy H. Koh

WE HEREBY CONSENT TO THE FORM AND ENTRY OF THE ABOVE ORDER:

Dated: March 4, 2013

GUTRIDE SAFIER LLP

By: /s/ Seth A. Safier  
Seth A. Safier

Respectfully submitted on behalf of Plaintiff  
DAVID ELIAS

GIBSON, DUNN & CRUTCHER LLP

By: /s/ Samuel G. Liversidge  
Samuel G. Liversidge

Respectfully submitted on behalf of Defendant  
HEWLETT-PACKARD COMPANY

EXHIBIT A  
Specially Qualified Person

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

DAVID ELIAS, Individually and On Behalf of  
all Others Similarly Situated and the General  
Public,

Plaintiff,

v.

HEWLETT-PACKARD COMPANY,

Defendant.

CASE NO. 12-CV-0421 LHK

**JOINT STIPULATION AND  
[PROPOSED] PROTECTIVE ORDER**

**AGREEMENT TO ABIDE BY PROTECTIVE ORDER**

I, \_\_\_\_\_, being duly sworn, state that:

1. My address is \_\_\_\_\_

\_\_\_\_\_.

2. My present employer is \_\_\_\_\_,  
and the address of my present employment is \_\_\_\_\_

\_\_\_\_\_.

3. My present occupation or job description is \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_.

1           4.       I have attached hereto my current curriculum vitae and, to the best of my knowledge, a  
2 complete list of any present or former relationships or engagements between myself and any Party to  
3 the above-captioned action (the “Action”) or any known competitor thereof.

4           5.       I hereby acknowledge that I have read the Stipulation and Protective Order  
5 (“PROTECTIVE ORDER”) in the above-captioned action (the “Action”), that I am familiar with the  
6 terms thereof, and that I agree to be bound by the terms thereof.

7           5.       I hereby acknowledge that, pursuant to the PROTECTIVE ORDER, I may receive  
8 information designated as RESTRICTED INFORMATION or RESTRICTED OUTSIDE COUNSEL  
9 ONLY INFORMATION in this Action, and certify my understanding that such information is  
10 provided to me pursuant to the terms and restrictions of the PROTECTIVE ORDER. I agree not to  
11 reveal any RESTRICTED INFORMATION or RESTRICTED OUTSIDE COUNSEL ONLY  
12 INFORMATION or any notes containing or reflecting such information to anyone not authorized to  
13 receive such information pursuant to the terms of the PROTECTIVE ORDER, and I agree not to use,  
14 directly or indirectly, or allow the use of any RESTRICTED INFORMATION or RESTRICTED  
15 OUTSIDE COUNSEL ONLY INFORMATION for any purpose other than a purpose directly  
16 associated with my duties in this litigation.

17           6.       I understand that I am to retain all copies of the materials that I receive which have  
18 been designated as containing or reflecting RESTRICTED INFORMATION or RESTRICTED  
19 OUTSIDE COUNSEL ONLY INFORMATION in a container, cabinet, drawer, room, or other safe  
20 place in a manner consistent with the PROTECTIVE ORDER. I understand that all copies of any  
21 such materials are to remain in my custody until the conclusion of this Action or the completion of  
22 my assigned duties, whereupon the copies are to be destroyed or returned to the Producing Party.  
23 Such return or destruction shall not relieve me from the obligations imposed upon me by the  
24 PROTECTIVE ORDER. I further agree to notify any support personnel (such as paralegals,  
25 administrative assistants, secretaries, and clerical and administrative staff) who are necessary to assist  
26 me of the terms of the PROTECTIVE ORDER and of their obligation not to reveal any  
27  
28

1 RESTRICTED INFORMATION to anyone not authorized to receive such information pursuant to  
2 the terms of the PROTECTIVE ORDER.

3 7. I understand that I shall be subject to the jurisdiction of the U.S. District Court for the  
4 Northern District of California in any proceeding relating to my performance under, compliance with,  
5 or violation of the PROTECTIVE ORDER.

6 Signature: \_\_\_\_\_

7 Date: \_\_\_\_\_  
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EXHIBIT B

Non-Parties, Including Qualified Consultant  
or Qualified Expert

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

DAVID ELIAS, Individually and On Behalf of  
all Others Similarly Situated and the General  
Public,

Plaintiff,

v.

HEWLETT-PACKARD COMPANY,

Defendant.

CASE NO. 12-CV-0421 LHK

**JOINT STIPULATION AND  
[PROPOSED] PROTECTIVE ORDER**

**AGREEMENT TO ABIDE BY PROTECTIVE ORDER**

I, \_\_\_\_\_, being duly sworn, state that:

1. My address is \_\_\_\_\_

2. My present employer is \_\_\_\_\_,

and the address of my present employment is \_\_\_\_\_

1           3.       My present occupation or job description is \_\_\_\_\_  
2 \_\_\_\_\_  
3 \_\_\_\_\_  
4 \_\_\_\_\_.

5           4.       If I am a Qualifying Consultant or Qualifying Expert, I have attached hereto my  
6 current curriculum vitae and, to the best of my knowledge, a complete list of any present or former  
7 relationships or engagements between myself and any Party to the above-captioned action (the  
8 “Action”) or any known competitor thereof.

9           5.       I hereby acknowledge that I have read the Stipulation and Protective Order  
10 (“PROTECTIVE ORDER”) in this Action, that I am familiar with the terms thereof, and that I agree  
11 to be bound by the terms thereof.

12           6.       I hereby acknowledge that, pursuant to the PROTECTIVE ORDER, I may receive  
13 information designated as RESTRICTED INFORMATION in this Action, and certify my  
14 understanding that such information is provided to me pursuant to the terms and restrictions of the  
15 PROTECTIVE ORDER. I agree not to reveal any RESTRICTED INFORMATION or any notes  
16 containing or reflecting such information to anyone not authorized to receive such information  
17 pursuant to the terms of the PROTECTIVE ORDER, and I agree not to use, directly or indirectly, or  
18 allow the use of any RESTRICTED INFORMATION for any purpose other than a purpose directly  
19 associated with my duties in this litigation.

20           7.       I understand that I am to retain all copies of the materials that I receive which have  
21 been designated as containing or reflecting RESTRICTED INFORMATION in a container, cabinet,  
22 drawer, room, or other safe place in a manner consistent with the PROTECTIVE ORDER. I  
23 understand that all copies of any such materials are to remain in my custody until the conclusion of  
24 this Action or the completion of my assigned duties, whereupon the copies are to be destroyed or  
25 returned to the Producing Party. Such return or destruction shall not relieve me from the obligations  
26 imposed upon me by the PROTECTIVE ORDER. I further agree to notify any support personnel  
27 (such as paralegals, administrative assistants, secretaries, clerical and administrative staff) who are  
28 necessary to assist me of the terms of the PROTECTIVE ORDER and of their obligation not to reveal



1 any RESTRICTED INFORMATION to anyone not authorized to receive such information pursuant  
2 to the terms of the PROTECTIVE ORDER.

3 8. I understand that I shall be subject to the jurisdiction of the U.S. District Court for the  
4 Northern District of California in any proceeding relating to my performance under, compliance with,  
5 or violation of the PROTECTIVE ORDER.

6 Signature: \_\_\_\_\_

7 Date: \_\_\_\_\_  
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